



FAIRFAX COUNTY

DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT
12000 GOVERNMENT CENTER PARKWAY, SUITE 427
FAIRFAX, VIRGINIA 22035-0013

www.fairfaxcounty.gov/dpsm

VIRGINIA

Telephone: (703) 324-3201 Fax: (703) 324-3228 TTY: 1-800-828-1140

AMENDMENT NO. **4** *cam*

MAR 06 2003

SUBJECT: Digital Multifunction Devices

CONTRACTOR

Xerox Corporation
7000 West Park Drive, 3rd Floor
McLean, VA 22102

VENDOR CODE

B16-0408020-01

CONTRACT NO.

RQ 00-303550-14A

By mutual agreement, Contract RQ 00-303550-21A, Digital Multifunction Devices is amended to revise the General Conditions and Instructions to Bidders as follows:

- 1.) Technical Proposal, Page 130 (continuation of Proposed Changes - subsection Modification to County of Fairfax Special Provisions):

The paragraph of the Technical Proposal reading:

Paragraph 63, Indemnification. The paragraph is deleted in its entirety and replaced as follows:

"Subject to applicable law, in the event, and to the extent, any negligent act or act of omission of Xerox, their respective employees, agents or representatives causes (i) damage to or destruction of tangible property of third parties, and/or (ii) death or injury to any person, then such party shall indemnify, defend and hold Fairfax County harmless from and against any and all claims, including reasonable attorney's fees and expenses, which are brought as a result, provided that the party to be indemnified gives the indemnifying party reasonable notice and the opportunity to defend.

Client represents to Xerox that Client has taken adequate measures to void copyright infringement and will not request Services that would constitute copyright infringement or otherwise violate any intellectual property rights."

Is replaced with:

Paragraph 03 - INDEMNIFICATION: Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the

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Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

2.) Technical Proposal, Page 131 (continuation of Proposed Changes - subsection Modification to County of Fairfax Special Provisions):

The paragraph of the Technical Proposal reading:

Item 32. Project Audits. Xerox agrees to this requirement with the understanding that Xerox will keep accurate records verifying the charges for Services provided in the Agreement and shall upon reasonable written request, make such records available to Client. Such records shall be kept for a period of two (2) years following the expiration of this Contract, and shall be limited to financial and other records that are required to substantiate performance of Services and accurate billings under this contract. Notwithstanding the foregoing, Xerox shall not be required to disclose information deemed by Xerox to be confidential or proprietary.

Is replaced with (as per paragraph 32 of the RFP):

32. PROJECT AUDITS:

- 32.1 The Contractor shall maintain books, records and documents of all costs and data in support of the services provided. Fairfax County or its authorized representative shall have the right to audit the books, records and documents of the Contractor under the following conditions:
- If the contract is terminated for any reason in accordance with the provisions of these contract documents in order to arrive at equitable termination costs;
 - In the event of a disagreement between the Contractor and the County on the amount due the Contractor under the terms of this contract;
 - To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Contractor's efficiency or effectiveness under this contract; and,
 - If it becomes necessary to determine the County's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor that may result in a charge against the County.
- 32.2 These provisions for an audit shall give Fairfax County unlimited access during normal working hours to the Contractor's books and records under the conditions stated above.
- 32.3 Unless otherwise provided by applicable statute, the Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to Fairfax County for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor but without direct charge to the County, all its books, records documents and other evidence bearing on the costs and expenses of the services relating to the work hereunder.
- 32.4 Fairfax County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated above. The Contractor shall include this "Right of Audit and Preservation of Records" clause in all subcontracts issued by it and they shall require same to be inserted by all lower tier subcontractors in their subcontracts, for any portion of the work. Should the Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure Fairfax County's rights hereunder, the

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Contractor shall be liable to Fairfax County for all reasonable costs, expenses and attorney's fees which Fairfax County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Fairfax County from said persons under this clause. Such audit may be conducted by Fairfax County or its authorized representative.

All other prices, discounts, terms and conditions shall remain the same.

Cathy A. Muse
Cathy A. Muse, QPPO
Director/County Purchasing Agent

ACCEPTED:

Andras Ryan
Signature

2/25/03
Date

AUDRA E. RYAN
Name

Business SMC Director
Title

DISTRIBUTION:

Contract Administrator - LPM

Contractor - Steve Felts

Document Services - Johnny Hodge

Finance - Accounts Payable

DPSM - Admin Support - Van Fuller

FCPS_DIT - Michele Adams